

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on December 14, 2004. Applicants appreciate the Examiner's consideration of the Application. Claims 1, 5, 11, 12, 17, and 22 have been amended to clarify, more particularly point out, and more distinctly claim inventive concepts previously present in these claims. Certain amendments do not narrow the scope of the claims, and certain amendments are not required for patentability. Applicants respectfully submit that no new matter has been added by the amendments to the claims. In order to advance prosecution of this Application, Applicants have responded to each notation by the Examiner. Applicants respectfully request reconsideration and favorable action in this case.

Double Patenting Rejection

The Examiner rejects Claims 1-9 and 11-23 of the present Application under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 and 2 of U.S. Patent No. 6,360,279 issued to Woods et al. ("Woods") in view of U.S. Patent No. 5,761,507 issued to Govett et al. ("Govett"). Although Applicants do not necessarily agree with or acquiesce to the Examiner's comments regarding the claims of the present Application or their purported relationship to the claims of *Woods* and *Govett*, Applicants stand willing to file a terminal disclaimer pursuant to the requirements set forth in 37 C.F.R. § 1.321 upon an indication of allowable subject matter to advance the prosecution of this case if the Examiner maintains the double patenting rejection.

Section 103 Rejections

The Examiner rejects Claims 1-9 and 11-23 under 35 U.S.C. § 103(a) as being unpatentable over "Govett" in view of U.S. Patent No. 5,428,781 issued to Duault et al. ("Duault"). Applicants respectfully traverse this rejection for the reasons discussed below.

Applicants respectfully submit that the combination of *Govett* and *Duault* as proposed by the Examiner fails to disclose, teach, or suggest elements specifically recited in Applicants' claims. For example, the *Govett-Duault* combination proposed by the Examiner fails to disclose, teach, or suggest the following specifically recited in Claim 1, as amended:

a handler process of the plurality of handler processes operable to:

compete with one or more other handler processes of the plurality of handler processes for the at least one request; and
receive the at least one request independently of an intervening process to dispatch the at least one request

Govett fails to disclose, teach, or suggest the elements. *Govett* discloses a transaction manager that “assigns available servers to the requests in the order the requests are received in order to provide equitable distribution of service resources over an increased number of client/server connections.” (*Govett*, Abstract.) According to *Govett*, a first server is started, and a first request is directed to the first server:

When the transaction manager is started, server 1 is started under control of register 302. When a request is then received, it is temporarily directed to request queue 310 and, since server 1 has been started and is presumably available, switch 312 immediately directs the request to server 1 where the request is processed and the result returned to the client through network interface 300.

(*Govett*, column 6, lines 53-59.)

Govett also discloses starting a second server, and the directing a second request to the second server:

Now, suppose that during the processing of the request in server 1, a second request is received from the same or another client. . . . If a third request is then received from the same or another client while server 1 continues to process the first request, however, the queue length equals the server start value in register 304 and a signal is sent to the service start/stop element 316 which will then start server 2. When server 2 thus becomes available, the second request is passed thereto through switch 312.

(*Govett*, column 7, lines 9-19.) That is, *Govett* discloses **starting a server**, and the directing a request to the started server. Accordingly, *Govett* fails to disclose, teach, or suggest a handler process of the plurality of handler processes operable to “compete with one or more other handler processes of the plurality of handler processes for the at least one request,” and “receive the at least one request independently of an intervening process to dispatch the at least one request,” as recited by Claim 1.

Govett also discloses starting multiple servers:

It is also convenient to provide for a delay in starting servers of about the same amount of time or in dependence on the length of the request queue being greater than the value specified in register 302 in view of the processing overhead required for starting a server. . . . By setting the service start value

to two (or more) and the service stop value similar to the time required to start a server, a gain in processing throughput is, in fact, achieved since the request remaining in the request queue 310 will be immediately passed to any available server upon completion of any prior request.

(*Govett*, column 7, lines 51-67.) That is, *Govett* discloses passing a request to “any available server,” but **does not disclose how the available server is selected**. Accordingly, *Govett* fails to disclose, teach, or suggest a handler process of the plurality of handler processes operable to “compete with one or more other handler processes of the plurality of handler processes for the at least one request,” and “receive the at least one request independently of an intervening process to dispatch the at least one request,” as recited by Claim 1.

Moreover, *Duault* fails to disclose, teach, or suggest the elements. *Duault* discloses a scheduling mechanism. (*Duault*, Abstract.)

According to this scheduling mechanism, an independent scheduler (6) is dedicated to each of the processes of a process group, and all the schedulers monitor the status of the data message queue, and upon receipt of an empty-to-non-empty E-NE signal, the least busy scheduler dequeues shared data from the queue, so that it can be processed by *its associated process*, without however, loosing fault-tolerance in case of a particular processor failing.

(*Duault*, Abstract, emphasis added.) That is, *Duault* discloses a **least busy scheduler** that retrieves data to be processed by a **process associated with the scheduler**. Accordingly, *Duault* fails to disclose, teach, or suggest a handler process of the plurality of handler processes operable to “compete with one or more other handler processes of the plurality of handler processes for the at least one request,” and “receive the at least one request independently of an intervening process to dispatch the at least one request,” as recited by Claim 1.

Consequently, at a minimum, *Govett*, *Duault*, and the *Govett-Duault* combination proposed by the Examiner fail to disclose, teach, or suggest the elements specifically recited in independent Claim 1, as amended.

The dependent claims are allowable based on their dependence on the independent claim, and further because they recite numerous additional patentable distinctions over the references of the rejection. Because Applicants believe they have amply demonstrated the allowability of the independent claim over the references of the rejection, and to avoid burdening the record, Applicants have not provided detailed remarks concerning these

dependent claims. Applicants, however, remain ready to provide such remarks if it becomes appropriate to do so. Accordingly, Applicants respectfully request reconsideration and allowance of independent Claim 1 and all claims that depend on Claim 1.

Independent Claims 5, 11, 12, 17, and 22 recite certain limitations substantially similar to those recited in independent Claim 1. Accordingly, for at least the same reasons, Applicants also respectfully request reconsideration and allowance of independent Claims 5, 11, 12, 17, and 22, together with their dependent claims.

CONCLUSION

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicants.

Applicants do not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,
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Date: February 14, 2005

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